

COASTAL CONSERVANCY

Staff Recommendation
September 29, 2016

COASTAL ACT ENFORCEMENT

Project No. 16-033-01
Project Manager: Mary Small

RECOMMENDED ACTION: Authorization to disburse up to \$400,000 to the California Coastal Commission to fund statewide enforcement of the Coastal Act.

LOCATION: Statewide

PROGRAM CATEGORY: General Provisions, Chapter 1 of Division 21 of the Public Resources Code

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 30823 and 31011 of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes disbursement of up to four hundred thousand dollars (\$400,000) from the Violation Remediation Fund, part of the State Coastal Conservancy Fund, to the California Coastal Commission for enforcement of the Coastal Act. This authorization is subject to the condition that prior to the disbursement of funds, the California Coastal Commission shall submit for review and approval of the Conservancy’s Executive Officer a work program, budget, schedule for this project.”

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed authorization is consistent with Sections 30823 and 31011 of the Public Resources Code.
2. The proposed project is consistent with the current Conservancy Project Selection Criteria and Guidelines.”

PROJECT SUMMARY:

The proposed authorization is to provide funding from the Violation Remediation Account (VRA) held as part of the State Coastal Conservancy Fund to the California Coastal Commission (Commission) to fund staff positions to enforce the California Coastal Act (Coastal Act). Funds in the VRA are solely for the purpose of carrying out the provisions of the Coastal Act and are available to spend after legislative appropriation. (Public Resources Code, Section 30823).

The proposed project consists of implementation of the Commission's Enforcement Program through retention of additional enforcement staff. The Commission's Enforcement Program enforces all aspects of the Coastal Act, ensuring that violations of the Coastal Act are resolved and that the violators address all associated liabilities. The integrity of the Coastal Act depends on the Commission's ability to fairly enforce it statewide. Through its Enforcement Program, the Commission ensures that all coastal zone development complies with the Coastal Act and applicable Coastal Development Permits. The Commission currently has more than 2,100 open enforcement cases and new violations are regularly reported to them by the public. Enhancing the capacity of the Enforcement Program will enable the Commission to respond to violations and resolve them quickly.

The Commission's Enforcement Program works to resolve violations of the Coastal Act such as illegal barriers to public access to beaches, damage to environmentally sensitive resources, and damage to cultural resources. Past enforcement actions have resolved many illegal barriers to public access. There are many examples where Commission enforcement actions compelled private property owners to remove illegal gates or signs blocking public access to the coast. Other enforcement actions led to the removal of illegal encroachments that physically blocked public access to the beach. Finally, Commission enforcement staff has taken action against illegal entry fees to a beach in Malibu. Commission enforcement actions have also protected natural resources and cultural resources throughout the Coastal Zone including unpermitted destruction of cultural resources, filling of wetlands and impacts to environmentally sensitive habitat areas.

The Commission's Enforcement Program has a number of tools to resolve violations, including administrative civil penalties, cease and desist and restoration orders, formal notices of violation and litigation. The goal of the Enforcement Program is to ensure the legal implementation of the Coastal Act and to resolve issues and violations appropriately, and to protect coastal resources.

Site Description:

Coastal Act enforcement would occur in the Coastal Zone, statewide.

Project History:

The Violation Remediation Account was established in 1982 pursuant to an amendment to the Coastal Act of 1976 (Public Resources Code Section 30823, Disposal of Funds, Amended by Ch. 1618, Stats. 1982). The Violation Remediation Account was established as a part of the State Coastal Conservancy Fund to hold deposits of funds received through resolution of violations of the Coastal Act:

“Any funds derived under this article shall be expended for carrying out the provisions of this division, when appropriated by the Legislature. Funds so derived shall be deposited in the Violation Remediation Account of the Coastal Conservancy Fund until appropriated.” (Public Resources Code Section 30823).

The Conservancy and Commission staff work together to identify priority uses for these funds. In the past, the VRA funds were used for a variety of projects throughout California, including

projects to acquire habitat areas, construct new public beach stairways and to improve the Commission's permit database.

PROJECT FINANCING

Coastal Conservancy	<u>\$400,000</u>
Project Total	\$400,000

The expected source of Conservancy funds for this project is the FY 14/15 appropriation to the Conservancy from the Violation Remediation Account (VRA). As discussed above, funds in the VRA are available for carrying out provisions of the Coastal Act (Public Resources Code, Section 30823). Funds in the VRA originate from both administrative orders and settlements and judicial actions arising from Coastal Act violations resolved by the Commission. Increasing enforcement of the Coastal Act will help implement the Coastal Act and therefore the proposed project is an appropriate use of VRA funds.

CONSISTENCY WITH COASTAL ACT:

The proposed authorization is undertaken pursuant to Public Resources Code Section 30823 which directs the Conservancy to use funds in the Violation Remediation Account to carry out the provisions of the Coastal Act. Increasing staff resources in the Commission's Enforcement Program will help implement the Coastal Act.

CONSISTENCY WITH CONSERVANCY'S AUTHORITY

The proposed authorization is undertaken pursuant to Public Resources Code Section 31011 which directs the Conservancy to deposit funds into segregated accounts within the State Coastal Conservancy Fund. The VRA funds are held in a segregated account within the State Coastal Conservancy Fund. The expenditure of the VRA funds from the Coastal Conservancy Fund is statutorily provided in Public Resources Code Section 30823, which directs the Conservancy to use the VRA funds to carry out provisions of the Coastal Act.

CONSISTENCY WITH CONSERVANCY'S 2013 STRATEGIC PLAN GOAL(S) & OBJECTIVE(S), AS REVISED JUNE 25, 2015:

Consistent with **Goal 2, Objective 2B** of the Conservancy's 2013-2018 Strategic Plan, the proposed project will help open coastal areas that are currently inaccessible or closed to public use by resolving encroachments or illegal barriers to public access.

Although it will also address other types of violations, the Commission's Enforcement Program will help remove illegal encroachments or unpermitted barriers to public access, thereby helping to open accessways that are currently closed to the public as a result of unpermitted development.

**CONSISTENCY WITH CONSERVANCY'S
PROJECT SELECTION CRITERIA & GUIDELINES:**

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines, last updated on October 2, 2014, in the following respects:

Required Criteria

1. **Promotion of the Conservancy's statutory programs and purposes:** See the "Consistency with Conservancy's Enabling Legislation, Consistency with Coastal Act and Consistency with Conservancy's Strategic Plan" sections above. The Conservancy has a long history of working in partnership with the Commission and our two agencies share the goals of protecting coastal resources and increasing public access to the coast. The proposed project will help open coastal areas that are currently inaccessible to public use by resolving illegal barriers to public access.
2. **Consistency with purposes of the funding source:** See the "Project Financing" section above.
3. **Promotion and implementation of state plans and policies:** The proposed project will implement Objective 5.4 in the Coastal Commission's 2013 Strategic Plan: "Increase Compliance With and Enforcement of the Coastal Act". Enforcement actions that remove barriers to public access implement the state policy, as set forth in Coastal Act section 30210, to maximize public access to and along the coast. Enforcement of the Coastal Act also promotes the Governor's Environmental Goals and Policy Report by "stewarding natural resources, including forests, working lands, and wetlands, to ensure that they store carbon, are resilient, and enhance other environmental benefits."
4. **Support of the public:** There is enormous public support for the Commission and the goals of resource protection and public access.
5. **Location:** Funds will be spent statewide in the Coastal Zone.
6. **Need:** The Commission does not have any other funding available to support these staff positions.
7. **Greater-than-local interest:** The Commission's mission is to protect and enhance California's coast for present and future generations. The coast is a public resource of enduring significance, millions of Californians and visitors to California enjoy the beaches, trails and scenic vistas of the coast. Lifeguard data from 2015 estimated that 37 million visitors to California's beaches and that is only counting attendance at beaches with lifeguards.

The Coastal Act was enacted by the Legislature in 1976 to carry out the original mandate of Proposition 20, which was passed by the citizens of California in 1972. The Coastal Act establishes strong resource protection and coastal development policies for California's coastal zone, including policies to provide maximum public access to and along the shoreline, to protect sensitive coastal resources, and to provide for priority coastal dependent development and visitor-serving land uses.

8. **Sea level rise vulnerability:** This project is not subject to sea level rise vulnerability.

COMPLIANCE WITH CEQA:

The funding of Coastal Commission enforcement staff positions is exempt from CEQA pursuant to California Code of Regulations, Section 15321(a) because the Coastal Commission, a regulatory agency, will be enforcing its coastal development permits, an entitlement for use issued by it, or enforcing a law, the Coastal Act, administered by it.

Also, funding for Coastal Commission enforcement staff positions is exempt from CEQA under Sections 15307 and 15308 because the enforcement staff will take actions for the protection of natural resources and for the protection of the environment pursuant to the Coastal Commission's regulatory process, which involves procedures for protection of the environment. Upon approval, staff will file a notice of exemption for this project.